

No. 89-863

Supreme Court, U.S.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1989

MYRON HARPER AND JANE HARPER,
Petitioners

v.

FEDERAL LAND BANK OF SPOKANE,
A CORPORATION, *et al.*,
Respondents

**PETITIONERS' REPLY TO BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

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Respondents misread the Harpers' petition for certiorari to rely upon the conflict between the United States Court of Appeals for the Eighth and Ninth Circuits in *Zajac v. Federal Land Bank of St. Paul*, 887 F.2d 844 (8th Cir. 1989), and *Harper v. Federal Land Bank of Spokane*, 878 F.2d 1172 (9th Cir. 1989), as the sole reason for this Court to exercise its discretion to grant the petition. However, the Harpers offer two *separate* reasons why their petition should be granted, beginning on page 6 in a section entitled "*Reasons for Granting the Petition.*" (Emphasis added.) The reasons cited by the Harpers include *both* the conflict between the circuits *and* the independent and separate consideration under Rule 17(c), which addresses the situation:

When a state court or a federal court of appeals has decided an important question of law which has not been, but should be, settled by this court . . .

Thus, clearly, the Harpers submitted their petition on two separate grounds contemplated by this Court to support review by certiorari. The fact that the presence of both of these factors in a case has, in the past, heightened this Court's willingness to grant certiorari does not detract from the independent significance of each stated reason on its own merits. Nothing in the Rules compels or even suggests such a conclusion; indeed, nothing in the respondents' Brief in Opposition cites any authority in support of that position. Rather, the respondents merely select and quote out of context a statement from the petition that is part of an argument, not a jurisdictionally limiting allegation as the respondents would have it. Word games do not substitute for legal authority.

The petitioners have demonstrated that the question posed in this case is of enormous national significance. That significance, and this Court's previous decisions on "important questions" set out on page 19 of the petition, underscore the separate and independent reason for this Court to grant review by certiorari. The Court should grant the Harpers' petition because of the national importance of the issue—to the 600,000 farm credit borrowers nationwide, to the 12 Farm Credit Districts, to the hundreds of Farm Credit Associations they oversee, and to the federal judiciary, which is presiding over more than a score of *Harper/Zajac*-type cases at both the district and appeals court levels.

Finally, as the respondents point out, the Eighth Circuit has not yet heard argument on or decided the *Zajac* case en banc; the argument is set for January 19, 1990. The question of a conflict between the Eighth and Ninth Circuits will remain an open one until *Zajac* is resolved. If the Court concludes that the petition is worthy of its grant of certiorari *only* if a conflict exists on the *Harper/Zajac* issue, the petitioners agree with

respondents that the Court should defer ruling on the petition until the Eighth Circuit has issued its en banc decision in *Zajac*.

Respectfully submitted,

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